

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA, §
§
Plaintiff, §
§
v. § Cause No. 18 CR 2945 WJ
§
SIRAJ IBN WAHHAJ, §
§
Defendant. §

MOTION TO DETERMINE MR. WAHHAJ'S COUNSEL
AND FOR LEAVE TO WITHDRAW AS COUNSEL

Marc H. Robert and Thomas Clark, appointed counsel for Defendant Siraj Ibn Wahhaj, respectfully move this Court for order permitting his their withdrawal as appointed counsel for Mr. Wahhaj, and in support thereof would respectfully show the Court as follows:

1. Mr. Clark was appointed to represent Mr. Wahhaj on February 22, 2019 following the withdrawal of previously appointed counsel [Docs. 77, 78, 80]. Mr. Robert was appointed on October 18, 2022 following the withdrawal of previously appointed counsel [Docs. 511, 522, 527, 528].

2. On May 5, 2023, Mr. Wahhaj filed a motion which alternatively seeks the Court approval to proceed to represent himself in this cause, and seeking an order removing Mr. Robert as his counsel.

3. In his motion, Mr. Wahhaj makes various claims asserting that Mr. Robert is incompetent, unethical and failing to provide constitutionally adequate representation. Mr. Wahhaj further alleges that Mr. Robert was assigned as his counsel to actively undermine Mr. Wahhaj's defense.

4. Counsel will not address the specifics of Mr. Wahhaj's allegations in his motion at this time, other than to generally deny them. The opportunity to address those specifics will likely arise in separate proceedings. The nature of the allegations, however, and the likelihood of those separate proceedings, makes it clear that a patent and profound conflict exists between Mr. Robert and Mr. Wahhaj. While counsel recognize that trial is less than five months away, Mr. Wahhaj's belief that his counsel are actively working to undermine his interests make a functional attorney-client relationship difficult, if not impossible, implicating Mr. Wahhaj's rights to due process and effective assistance of counsel.

5. It is unclear from Mr. Wahhaj's motion whether he seeks to represent himself, as is indicated at the start of his motion, or whether he only

seeks the removal of Mr. Robert from his defense team, as is requested at the end of the motion. If the Court schedules a *Farettta* hearing, that will undoubtedly be made clear. However, either way, the existence of Mr. Wahhaj's suspicions and beliefs about Mr. Robert's conduct in Mr. Wahhaj's representation compels the conclusion that that attorney-client relationship is irreparably damaged and should be ended.

6. In the event that the Court determines that Mr. Wahhaj's request is that he be permitted to proceed *pro se*, that request would implicate Mr. Clark's continued role as Mr. Wahhaj's counsel as well.

7. The undersigned counsel ask the Court to convene a partially sealed hearing at which Mr. Wahhaj's wishes can be determined, the existence of a conflict can be explored, and a determination of Mr. Wahhaj's representation as trial approaches can be made.

8. The undersigned counsel has conferred with counsel for the Government regarding this motion. The Government takes no position as to the relief requested in this motion.

WHEREFORE, SIRAJ IBN WAHHAJ , Defendant, respectfully requests this Court enter an Order scheduling a hearing at which Mr. Wahhaj's representation can be determined, and if necessary, to determine whether Mr.

Wahhaj's request to proceed *pro se* should be granted; and provide such other and further relief which the Court may find to be necessary and appropriate.

Respectfully Submitted,

/s/ Electronically filed on 5/8/23

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